

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
SAN ANGELO DIVISION**

DEBRA K. GODFREY, §  
Plaintiff, §  
vs. § Civil Action No. 6:06-CV-0002-BI  
MICHAEL J. ASTRUE<sup>1</sup>, § ECF  
Commissioner of Social Security, §  
Defendant. §

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** is before the court upon Plaintiff's Motion to Dismiss Complaint filed January 31, 2007 (Doc. 34). Plaintiff is proceeding *pro se* and *in forma pauperis* in this matter. Plaintiff filed her complaint on January 9, 2006, seeking review of the decision of the Commissioner denying her application for a period of disability and disability insurance benefits under Title II of the Social Security Act. Plaintiff and Defendant each consented to having the United States Magistrate Judge conduct all further proceedings in this matter on October 17, 2006, and on October 27, 2006, respectively (Docs. 28, 29).

**I. PROCEDURAL HISTORY**

The United States District Judge, pursuant to 28 U.S.C. § 636(b), referred this matter to the United States Magistrate Judge for report and recommendation, proposed findings of fact and

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<sup>1</sup> Michael J. Astrue has been appointed as the new Commissioner of Social Security, effective February 12, 2007, and is therefore substituted as Defendant in this matter for Jo Anne B. Barnhart, per FED. R. CIV. P. 25(d)(1).

conclusions of law, and a proposed judgment. Plaintiff filed her complaint on January 9, 2006. Upon Plaintiff's application to proceed *in forma pauperis*, the court entered an Order Permitting Filing *In Forma Pauperis* and directing the issuance of process on June 15, 2006 (Doc. 14).

On August 1, 2006, the court entered an Order to Show Cause warning Plaintiff that in order to avoid a recommendation to the United States District Judge that this matter be dismissed without prejudice, the Plaintiff should either effect service or show good cause for failure to serve by Monday, August 21, 2006. Plaintiff thereafter effected service and Defendant filed her answer and a transcript of the administrative proceeding (Docs. 20, 23). On October 4, 2006, the court entered a scheduling order setting forth the briefing schedule in this case.

Plaintiff moved this court for an extension of time in which to file her brief on October 31, 2006. The court granted Plaintiff's motion and permitted her until January 8, 2007, to file her initial brief. Plaintiff failed to timely file her brief, and the court entered a second Order to Show Cause on January 17, 2007 (Doc. 33). On January 31, 2007, Plaintiff filed a Motion to Dismiss Complaint, asking that the court dismiss her complaint as she has not been able to obtain counsel in this matter (Doc. 34). Defendant has not filed a response to her motion.

## **II. ANALYSIS**

Pursuant to FED. R. CIV. P. 41(a)(1)and(2), the court may dismiss an action upon the motion of the Plaintiff where such motion is not opposed by the Defendant, "upon such terms and conditions as the court deems proper." Unless otherwise specified, such a dismissal is generally without prejudice. FED. R. CIV. P. 41(a)(2).

Plaintiff has voluntarily moved to dismiss her case before this court. She has not filed her opening brief. Although Defendant filed an answer and the transcript of the administrative proceedings, he has not filed his brief. The court has considered Plaintiff's request to dismiss her

complaint, which Defendant has not opposed. The court finds that Plaintiff's motion is well-taken and should be granted and that this case should be dismissed without prejudice.

### III. CONCLUSION

Based upon the foregoing discussion of the issues, the evidence, and the law, this court finds that Plaintiff's Motion to Dismiss filed January 31, 2007 (Doc. 34), should be **GRANTED** and Plaintiff's complaint filed January 9, 2006 (Doc. 1), should be **DISMISSED WITHOUT PREJUDICE**.

**SO ORDERED.**

DATED this 26th day of February, 2007.



Philip R. Lane  
PHILIP R. LANE  
UNITED STATES MAGISTRATE JUDGE